

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JEFF BUCH
LEONARD BUCH**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2007-AFO-40**

**TO: Jeff Buch
1546 171st Street
Fairfield, IA. 52556**

**Leonard Buch
1108 South 4th Street
Fairfield, IA. 52556**

I. SUMMARY

This administrative consent order (Order) is entered into between Jeff Buch, Leonard Buch and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to confinement feeding operations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Mark Heiderscheit
Field Office No. 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Ph: 319-653-2135

Relating to legal requirements

Randy Clark, Attorney II
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319-0034
Attn: Randy Clark

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II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code subsection 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 459, subchapter III, and the rules adopted or permits issued pursuant thereto; and Iowa Code sections 455B.109 and 459.103(3), and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Jeff Buch operates a farrow to finish swine confinement operation on property owned by Leonard and Joan Buch located in the SW1/4 of the SE1/4 of Section 1, T72N, R11W (Locust Grove Township), Jefferson County, Iowa. The operation consists of ten confinement buildings with a reported capacity of 1524 head, or 490 animal units. Manure is stored in two unformed manure storage structures, constructed in 1983 and approximately 1968, and in two below-building pits.

2. During a routine manure storage structure inspection on September 23, 1998, Field Office #6 (FO6) advised Leonard Buch that the unformed manure storage structure had virtually no freeboard instead of the required two feet of freeboard. By letter dated October 20, 1998, Jeff Buch was notified by FO6 that a follow-up inspection on October 19, 1998, revealed that freeboard in the unformed structure was only a few inches; Jeff Buch was directed to comply with the required freeboard of two feet. On December 29, 1998, Jeff Buch visited the FO6 office and reported that he was then in compliance with the two-foot freeboard requirement.

3. During a manure storage structure inspection on September 23, 1999, FO6 staff observed that the unformed manure storage structure had only 18 inches of freeboard and provided Leonard Buch with a copy of the inspection report.

4. During a routine manure storage structure inspection on July 21, 2005, FO6 staff noticed that a confinement building was in use that did not exist at the last inspection in 2003 and that another confinement building was under construction. Jeff Buch indicated that the building in use was constructed in 2004. Mr. Buch explained that he constructed a new 300 head building in 2004 and that the manure is piped to one of the unformed manure storage structures. Mr. Buch was directed to contact the Department's construction permit staff to determine necessary corrective actions. FO6 staff also observed excessive weedy vegetation, rodent damage and erosion problems at the manure storage structures and directed Mr. Buch to correct those issues.

5. On August 11, 2005, Leonard Buch telephoned the Department's construction permit staff and explained his construction activities. He was advised that a construction

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permit was required because manure from the new buildings will be piped to unformed manure storage structures. Mr. Buch was directed to stop construction until all necessary approvals were obtained. Department staff requested that Mr. Buch submit a description of his buildings along with a sketch showing relative locations.

6. On October 20, 2005, FO6 staff conducted a follow-up inspection at the Buch operation. The confinement building that was being constructed on July 21, 2005 appeared to be complete but not yet populated. Some soil had been added around the large unformed manure storage structure and most weeds had been removed, but inner berm erosion was still evident. By letter dated November 2, 2005, FO6 directed Jeff and Leonard Buch to provide by November 17, 2005: information previously requested by the construction permit staff plus additional historical and descriptive information; a description of work performed on the large unformed structure between July 21, 2005 and October 20, 2005; an evaluation of the operation prepared by an engineer; and a construction permit application.

7. On November 14, 2005, Leonard Buch delivered to FO6 a sketch showing the locations of the confinement feeding operation structures, a listing showing when each structure was constructed, and a log of animals sold in 2004. On November 28, 2005, Mr. Buch delivered a revised sketch showing locations of the structures and a revised list of construction dates. In both sets of documents Mr. Buch indicated that the two newest confinement buildings were constructed in 2003 and 2005. These submissions did not include an application for a construction permit.

8. By letter dated November 16, 2005, FO6 responded to the documents submitted on November 14, 2005, notifying Jeff and Leonard Buch that they were in violation of Iowa law because a construction permit was not obtained prior to constructing a confinement building that utilizes an unformed manure storage structure. On November 28, 2005, Leonard Buch visited the FO6 office and discussed various compliance issues with FO6 staff.

9. By letter dated November 29, 2005, Leonard Buch's engineer submitted a completed "MMP Field Questions for Confinement Sites" and indicated that a construction permit application would soon be submitted. By letter dated December 30, 2005, Leonard Buch's engineer indicated that Mr. Buch intended, instead, to connect the recently constructed confinement buildings to a proposed formed structure rather than the unformed structure and requested confirmation from FO6 that neither a construction permit nor an MMP would be required for said construction. Subsequently the Department agreed that a construction permit would not be required if the manure transfer piping between the recently constructed confinement buildings and the unformed structure is removed, but the Department reserved the right to assess an administrative penalty for the unauthorized construction.

10. By letter dated January 5, 2006, FO6 notified Jeff and Leonard Buch that their violation of construction permit requirements would be referred for enforcement action

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and directed them to comply with listed requirements regarding previous construction activities and the proposed formed manure storage structure.

11. On June 18, 2007, FO6 conducted an inspection of the unformed manure storage structures. The south structure had less than the required two feet of freeboard.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 requires the Environmental Protection Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC chapter 65.

2. 567 IAC 65.2(3)"b" and "c" require that manure be removed as necessary to maintain a freeboard of at least two feet in earthen manure storage structures; and that manure be removed as needed prior to periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors) in order to assure that adequate capacity exists in the manure storage facilities. The foregoing facts establish that these requirements were violated.

3. 567 IAC 65.7(1)"b"(1) requires a confinement feeding operation to obtain a construction permit prior to constructing or modifying a confinement building that uses an unformed manure storage structure. The foregoing facts disclose violation of this provision.

V. ORDER

THEREFORE, the Department hereby orders and Jeff and Leonard Buch consent to do the following:

1. By December 1, 2007, remove all manure transfer piping connecting the confinement buildings constructed in 2003 and 2005 with the unformed manure storage structures;

2. Notify FO6 at least 7 days prior to the piping removal required in paragraph 1, above, so that FO6 may confirm the removal;

3. When installing any replacement formed manure storage structure constructed with concrete, comply with the concrete standards set forth in 567 IAC 65.15(14). In addition, prior to constructing a replacement concrete manure storage structure, submit a completed construction design statement and notify FO6 at least 7 days prior to the date scheduled for pouring concrete; and

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4. Pay an administrative penalty of \$6,000.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws, regardless of fault; more severe criminal sanctions are also provided for negligent and intentional violations.

2. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$6,000.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. The Buchs saved time and resources by not maintaining the required freeboard, thereby delaying land application of the manure. However, the savings is estimated to be minimal in this case. Further, any saving associated with the failure to obtain a construction permit will be offset by the cost of removing and relocating the manure transfer piping. Therefore, no amount is assessed for this factor.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. A permit is required to be obtained prior to construction to allow for review of plans and specifications pertaining to a proposed system. The purpose of this review is to determine if the facility will meet all applicable requirements. This review insures that the interests of the citizens of Iowa in clean water are protected. Construction prior to obtaining required permits or contrary to permits also threatens the integrity of the permit and water pollution control programs. In addition, this matter involves threatened harm to the environment due to the freeboard violation. For the purpose of resolving this matter, \$2,000.00 is assessed for this factor.

c. Culpability. Regarding the failure to obtain a construction permit, the Buchs proceeded with construction in 2005 despite a FO6 directive to stop construction until required approvals were obtained. Further, due to the 1998 and 1999 freeboard violations, the Buchs should have been fully aware of the freeboard requirements. For the purpose of resolving this matter, \$4,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

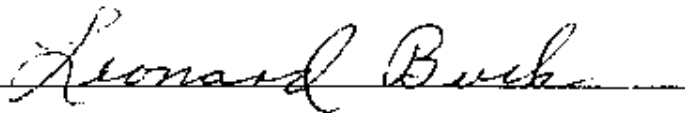
Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection

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Commission. This Order is entered into knowingly by and with the consent of Jeff Buch and Leonard Buch. By signature to this Order, all rights to appeal this Order are waived by Jeff Buch and Leonard Buch.

VIII. NONCOMPLIANCE

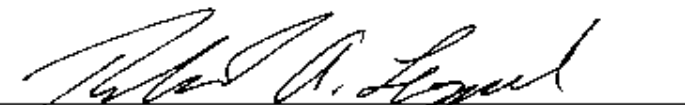
Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 459.603. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.


LEONARD BUCH

Dated this 29 day of
November, 2007.


JEFF BUCH

Dated this 29 day of
Nov, 2007.


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of
December, 2007.

Field Office 6; Randy Clark; Gene Tinker; VIII.A.1, D.2.a